

November 8, 2007

James Donato
Capitol Publishing
5041 Lyda Lane
Colorado Springs, CO 80904

Re: Formal Complaint 07-FC-313; Alleged Violation of the Access to Public Records Act by the Indianapolis Metropolitan Police Department

Dear Mr. Donato:

This is in response to your formal complaint alleging the Indianapolis Metropolitan Police Department ("Department") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to draft accident reports. A copy of the Department's response to your complaint is enclosed. It is my opinion the Indianapolis Metropolitan Police Department has not violated the Access to Public Records Act.

BACKGROUND

In your complaint you allege that on October 2, 2007 you submitted to the Department a request for records, specifically accident reports with an accident report date of October 1. You allege that as of the date of filing your complaint, October 9, you had not been granted access to a number of the reports for October 1.

The Department responded to your complaint by letter dated November 2 from assistant corporation counsel Lauren Toppen. Ms. Toppen indicates that the procedure followed by IMPD regarding accident reports has not changed since my opinion in response to complaint 07-FC-224, which you filed. The IMPD provides copies of draft reports for inspection by placing them in a public basket when they become available. Ms. Toppen responds to your complaint regarding the number of reports which have been placed in the public basket as of the date of your complaint. While you allege a number of crash reports have been withheld, Ms. Toppen clarifies that the list of accidents upon which you rely is not necessarily the list of reports generated by IMPD. First, not all runs on the log are covered by IMPD. Second, not every dispatched run results in a report. Third, a report was not necessarily submitted at the time it was created. Finally, an officer may make an incident report rather than an accident report. IMPD

estimates that, on average, about fifty-six percent of dispatched runs on the accident log result in accident reports being generated.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." I.C. §5-14-3-1. Any person has the right to inspect and copy the public records of a public agency during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. §5-14-3-3(a).

The Department is clearly a public agency for the purposes of the APRA. I.C. §5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Department during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. §5-14-3-3(a).

A request for records may be oral or written. I.C. §5-14-3-3(a); §5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. §5-14-3-9(b).

A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. A response could be, but is not required to be, production of records. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. §5-14-3-7(a). However, section 7 does not operate to deny to any person the rights secured by section 3 of the Access to Public Records Act. I.C. §5-14-3-7(c). The public access counselor has stated that records must be produced within a reasonable period of time, based on the facts and circumstances. Consideration of the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material are necessary to determine whether the agency has produced records within a reasonable timeframe.

The specific issue of accident reports maintained by the IMPD has been addressed in two opinions from this office this year, *Opinion of the Public Access Counselor 07-FC-27* and *Opinion of the Public Access Counselor 07-FC-224*, both written in response to complaints filed by you against the IMPD. My opinion regarding the draft accident reports remains unchanged since *Opinion 07-FC-224*, and I do not believe you have made any new allegations here regarding this issue. As such, I will refer you to that opinion rather than re-addressing the issues here. Further, I trust Ms. Toppen's explanation of the accident run log and the creation of reports in response to runs sheds some light on the matter for you. I appreciate this explanation of why the number of runs on the log does not match with the number of reports placed in the public basket for any given day.

CONCLUSION

For the foregoing reasons, it is my opinion that the Indianapolis Metropolitan Police Department has not violated the Access to Public Records Act.

Best regards,

A handwritten signature in black ink that reads "Heather Willis Neal". The signature is written in a cursive, flowing style.

Heather Willis Neal
Public Access Counselor

cc: Lauren Toppen, Office of Corporation Counsel, City of Indianapolis